

STATE OF MICHIGAN
COURT OF APPEALS

FREDERICK MANNING and LINDA
MANNING,

Plaintiffs-Appellants,

v

CITY OF EAST TAWAS,

Defendant-Appellee,

and

BLINDA A. BAKER,

Defendant.

UNPUBLISHED
March 1, 2005

No. 250759
Iosco Circuit Court
LC No. 95-009300-NZ

Before: Zahra, P.J., and Neff and Cooper, JJ.

ZAHRA, P.J., (*concurring*).

I concur in the result reflected in the lead opinion, but write separately to note that while I conclude plaintiffs should be entitled to the relief they have long sought, our hands are tied by the law of the case doctrine. Plaintiffs persuasively argue that defendant changed its position on remand and conceded for the first time that the zoning designation for plaintiffs' property allowed for placement of an RV Park. This change in position rendered incorrect this Court's prior decision addressing the ripeness of the "as applied" challenge to the zoning ordinance. However, a ruling on a legal question in the first appeal is binding on all lower tribunals and in subsequent appeals. *Kalamazoo v Dept of Corrections (After Remand)*, 229 Mich App 132, 135; 580 NW 2d 475 (1998). The law of the case doctrine applies without regard to the correctness of the prior determination. *Id.*

I do not fault the plaintiffs for stipulating to this fact. Plaintiffs throughout this litigation have maintained that the zoning designation for plaintiffs' property allowed for placement of an RV Park. In light of defendant's change in position, plaintiffs would have been in the precarious position of having to deny that which they continued to maintain as true.

Plaintiffs' sole remedy lies in the Supreme Court which could, in lieu of granting leave to appeal, remand this matter with specific instructions to consider plaintiffs' "as applied"

constitutional challenge to defendant's zoning ordinance in light of defendant's latest stipulations.

/s/ Brian K. Zahra